

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS,  
EASTERN DIVISION**

Protect Our Parks, Inc.; Charlotte Adelman;	)	
Maria Valencia and Jeremiah Jurevis;	)	No. 18-cv-03424
	)	
Plaintiffs,	)	
v.	)	Honorable John Robert Blakey
	)	
Chicago Park District and City of Chicago,	)	Jury Demanded
	)	
Defendants.	)	

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY  
JUDGMENT AS TO COUNTS I, II, III AND IV OF PLAINTIFFS' COMPLAINT**

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## I. INTRODUCTION

The undisputed facts establish that the Obama Presidential Center's placement in Jackson Park represents the culmination of decisions by private entities, the Obama Foundation and the University of Chicago, and for the benefit of those private entities, that was allowed to occur through the City and Park District's utter failure to use any due care in protecting Jackson Park, an important and unique part of Chicago and American history.

The City arbitrarily selected the Jackson Park Site – a public park subject to an express restriction that it be maintained “as a public park . . . free to all persons forever.” – over at least two other City-owned proposed sites which are not public trust land. One such non-park alternative site to locate the Presidential Center – the “Washington Site” -- is across the street from Washington Park, and was actually the Obama Foundation's first choice for the Presidential Center. That made sense, as the University of Chicago (“UofC”) had determined that the Washington Site “provided the greatest need with the greatest opportunity.” UofC also concluded: “Of all the proposed sites, the Washington Park neighborhood is the one with the greatest potential for economic development and growth.” Seemingly on a whim, however, the Foundation changed its mind and decided that it now likes the Jackson Park Site better; the City blindly followed suit and agreed to use public trust land for the Center.

Discovery has revealed that the City's decision was not based on any analysis or evaluation. Indeed, the City conducted *no analysis* of the benefits, merits, or demerits of any of the proposed sites. Nor did it even make any attempt to receive fair value for the Jackson Park Site. Worse, the City's selection of the Jackson Park Site actually penalizes the public to the tune of over \$200 million for roadway and other construction not required at the other proposed locations.



In short, the City has abdicated its trust over public park land. For these and other reasons more fully discussed below, Plaintiffs are entitled to summary judgment.

## II. BACKGROUND

In March 2014, the Obama Foundation (“Foundation”) initiated a search for the future site of what the Foundation terms the “Obama Presidential Center” (“Presidential Center” or “Center”). PSOF<sup>1</sup>¶4. Nine entities from several locations throughout the country submitted proposals for the Center, which included a total of 14 potential sites. PSOF¶ 25.

UofC and University of Illinois Chicago (UIC) were two of the entities proposing locations for the Presidential Center. UofC proposed three sites. PSOF¶¶ 5-24. All of UofC’s sites were located on the south side of Chicago. *Id.* One site was located in the Washington Park neighborhood, and included land across the street from Washington Park on which the Center could be built (the “Washington Site”). PSOF¶¶ 5, 8. UofC also proposed a site at the location of the South Shore Cultural Center (the “South Shore Site”). PSOF¶ 5. UofC also proposed the Jackson Park Site. PSOF¶ 5.

UIC proposed a site that consisted of two parcels of land. PSOF¶¶ 18-19. One parcel is located at UIC’s campus, and the second parcel of land is approximately 23 acres owned by the City. *Id.*

The Foundation performed an analysis of the proposals from all of the entities. PSOF¶ 25. The Foundation assessed each proposal based on criteria including the desirability of the site and the surrounding community from the Foundation’s perspective, accessibility of the site, and the financial benefit offered to the Foundation by the entity sponsoring the site. *Id.*

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<sup>1</sup> “PSOF¶\_\_” refers to a particular paragraph in Plaintiffs’ Statement of Undisputed Facts in Support of their Motion for Summary Judgment.

The top three sites from the Foundation's perspective were all located in Chicago. PSOF¶ 26. The Foundation ranked the Washington Site as its first choice. *Id.* The Foundation ranked the Jackson Park Site as its second choice. *Id.* The Foundation ranked the UIC Site as its third choice. *Id.* The Foundation specifically noted that the UofC sites were particularly desirable because UofC had a multi-billion dollar operating budget and endowment, and that UofC would pledge \$30 million to the Foundation in seed funding. *Id.*

The City of Chicago's City Council introduced an ordinance in January 2015, which was enacted on March 18, 2015 (the "2015 Ordinance"). PSOF¶ 4. The City Council resolved to accommodate the Presidential Center on the two remaining UofC sites and on the UIC Site. PSOF¶ 39. The City of Chicago unilaterally removed the South Shore Site from consideration, so that the Foundation could not choose the South Shore Site. PSOF¶ 7. That action was taken sometime between the Foundation ranking the sites in late 2014 and January 2015, although no City Council vote was taken on that action. *Id.* The City withdrew the South Shore Cultural Center from the Foundation's consideration without any analysis of the benefits to the City if the Center were located on the South Shore Site. *Id.*

#### The Proposed Sites for the Presidential Center Which the City Owns or Controls.

The following is an overview of salient features of each site under the ownership or control of the City, and considered by the City for the Presidential Center:

- Washington Site.

The Washington Site was UofC and the Foundation's first choice for the Presidential Center, and for good reason. The Washington Site is, in total, 34.2 acres. PSOF¶ 8. The Washington Site includes land across the street from Washington Park, and the Presidential

Center would be located on that non-park land. *Id.* The site where the Presidential Center would be built is not public trust property. PSOF¶ 11. UofC, in fact, expressly found that the Washington Site “provides an opportunity for the Foundation to develop the Presidential Center without occupying Park District land.” PSOF¶ 9.

UofC also found that the Washington Site “provided the greatest need with the greatest opportunity.” PSOF¶ 10. UofC opined that: “[o]f all the proposed sites, the Washington Park neighborhood is the one with the greatest potential for economic development and growth.” *Id.*

The site that would accommodate the Presidential Center formerly contained a filing station and auto garage. PSOF¶ 11. The City estimated the costs to remediate the non-park land to accommodate the Presidential Center at between \$2,506,836 and \$6,959,946. PSOF¶ 34.

The City did not perform any analysis of the street and road alterations, if any, that would be necessary to accommodate a Presidential Center across the street from Washington Park. PSOF¶ 13. The City did not perform any analysis of the costs, if any, to alter any streets or roads to accommodate the Presidential Center. *Id.* The City does not know the fair market value of the Washington Site. *Id.* The City does not know the fair market rental value of the Washington Site. *Id.*

- University of Illinois Site

The University of Illinois proposed two locations for the Presidential Center. PSOF¶ 18. UIC proposed a site on its campus, which is owned by the University of Illinois. *Id.* UIC also proposed the “North Lawndale Site” located in the City. PSOF¶¶ 18-19. The North Lawndale site consists of approximately 23 acres of land. PSOF¶¶ 18-19. The 23 acre North Lawndale Site is larger than the Jackson Park Site, which is approximately 19.3 acres. PSOF¶ 16, 19.

The City of Chicago owns the 23 acre North Lawndale Site. PSOF¶ 19. The City of Chicago's North Lawndale Site was a former industrial site. PSOF¶ 23. The City committed to ensuring that the site is environmentally clean, but the City never performed any environmental analysis to determine if any remediation was even necessary. PSOF¶ 23. The City never estimated any environmental remediation costs, if any, at the North Lawndale Site. PSOF¶ 23. The North Lawndale Site is not a historic landmark site. PSOF¶ 23.

The North Lawndale Site is located immediately south of the Eisenhower Expressway, and the site is serviced by the CTA transportation system. PSOF¶ 20. The City never performed any analysis of any street or roadway alterations, if any, necessary as a result of locating the Presidential Center on the North Lawndale Site. *Id.* The City accordingly never estimated any street or road alterations that would be necessary to locate the Center on the North Lawndale Site. *Id.*

No zoning changes are necessary to locate the Presidential Center at the North Lawndale site. PSOF¶ 23. Utilities, such as sewer, water, electrical and gas, are already connected to the property. *Id.* The City never performed any analysis of any necessary alterations to any utilities as a result of locating the Presidential Center at the UIC Site. *Id.* The City does not know the fair market value of the North Lawndale Site. PSOF¶ 22. The City does not know the fair market rental value of the North Lawndale Site. PSOF¶ 22.

Perhaps most importantly, the sites proposed by UIC are not parks. PSOF¶¶ 23-24. The UIC sites are not subject to the public trust doctrine. In fact, the City-owned 23 acre North Lawndale Site has no historic, archaeological or ecological features that are sensitive or would be impacted by the construction of the Presidential Center. PSOF¶ 23.

The City never performed any analysis of the costs to the residents of the City of Chicago or the State of Illinois as a result of locating the Presidential Center at the North Lawndale Site or at the UIC campus site. PSOF¶ 20. The City does not know the fair market value or fair rental value of the North Lawndale Site. PSOF¶ 22.

- Jackson Park Site

The Jackson Park Site is the only site that the City proposed for the Center that would locate the Presidential Center in a park. PSOF¶ 16. The Jackson Park Site is the only land on which the Presidential Center would be located that is property subject to the public trust. PSOF¶¶ 11, 15-17, 23.

The Jackson Park Site, unlike the other sites on which the Presidential Center would be located, contains an express restriction that the land be open and free as a park. PSOF¶ 17. The precise restriction on the Jackson Park land is that the land is to be used “as a public park, for the recreation, health and benefit of the public and free to all persons forever.” *Id.*

Jackson Park is located along the shores of Lake Michigan. PSOF¶ 15. Jackson Park’s landscaping was designed by legendary landscape architects Frederick Law Olmsted and Calvert Vaux. *Id.* Jackson Park is one of the largest public parks on the South Side of Chicago, and is used and enjoyed by local and regional residents. *Id.* The Jackson Park Site is listed on the National Register of Historic places. *Id.*

Locating the Center in the Jackson Park Site requires a change in zoning. PSOF¶ 16. Locating the Center in Jackson Park will require extensive alterations of City and State roads and streets. PSOF¶ 33. Locating the Center in Jackson Park will also require extensive utility work and environmental remediation. PSOF¶ 34-35. In fact, locating the Center on the Jackson Park Site will cost the residents of Chicago and the State of Illinois hundreds of millions of dollars.

PSOF¶¶ 33-37. The State of Illinois recently budgeted \$224 million to locate the Center in Jackson Park. PSOF¶ 38. The City of Chicago, pursuant to exhibits disclosed in this litigation, estimated costs to the public to locate the Center in the Jackson Park Site at between \$185 million to \$185.5 million. PSOF¶¶ 33-37.

Beyond the destruction of a part of historic Jackson Park, the estimated and actual costs to the public that the City disclosed in this case include the following:

• Estimated Costs for Roadway Alterations:	\$175,000,000. PSOF¶ 33.
• Estimated Environmental Remediation:	\$1,246,083 - \$1,852,831. PSOF¶ 34.
• Estimated Costs to Relocate Utilities:	\$3,285,843. PSOF¶ 35.
• Relocation of Water Main:	\$367,800. PSOF¶ 36.
• Actual Costs for Traffic Control Signal Review and Street Lighting Review:	\$75,000. PSOF¶ 36.
• Actual Costs as of end of December, 2018 for Architectural/Engineering:	\$4,972,798.72. PSOF¶ 37.
• Total estimated and actual costs to City/State residents:	<b>\$184,947,530.72 to \$185,554,272.72.</b>

The City has no idea of the fair market value of the Jackson Park Site. PSOF¶ 40. The City also has no idea as to the fair market rental value of the Jackson Park Site. *Id.* The City even admits that it never took into consideration the potential fair market value or fair rental value of the Jackson Park Site before authorizing the Foundation's use of the Jackson Park Site. *Id.* Despite the City having no knowledge as the value of this historic over 19 acres of public park land, the City is entering into an agreement giving the Foundation the land for 10 cents per year

for 99 years. PSOF¶ 44. In fact, the City admits that the only direct consideration that the City will receive is the Foundation's payment of 10 cents per year, in exchange for granting the Foundation exclusive possession and control over the Jackson Park Site for the next century. PSOF¶ 44.

- South Shore Site.

The South Shore Site is located on the south side of Chicago, and was proposed by UofC as a location for the Presidential Center. PSOF¶ 5. The South Shore Site is comprised of land owned by the Park District. PSOF¶ 6. The site consists of 28.7 acres, and contains an existing building that was formerly a country club known as the "South Shore Cultural Center." PSOF¶ 6.

The City removed the South Shore Site from the Foundation's consideration. PSOF¶ 7. No vote of the City Council was made to withdraw that location from consideration, but that decision is noted in the 2015 Ordinance. *Id.* Remarkably, the City withdrew the South Shore Site from consideration without performing any analysis whatsoever of the costs and benefits to the City of Chicago as a result of potentially locating the Presidential Center at the South Shore Site. *Id.*

The Following Chart Compares the Relevant Features of Each Potential Location For the Presidential Center

Locations for Obama Presidential Center				
	Washington Site	UIC Site	Jackson Park	South Shore Site
Public Park	NO	NO	YES	<b>WITHDRAWN BY CITY</b>
Public Trust Property	NO	NO	YES	
Restriction on Open Space	NO	NO	YES	
National Register of Historic Places	NO	NO	YES	
Estimated Costs (USD)	\$2.5 Million-\$6.9 Million	\$0	\$185 Million-\$224 Million	
City's Consideration of Benefits/Detriments	NO	NO	NO	
City's Consideration of Fair Market Value/Fair Lease Value	NO	NO	NO	

POX-1

The City's Never Performed Any Analysis of the Costs and Benefits of Locating the Presidential Center on Any of the Available Locations.

The City of Chicago owns or controls the Washington Site, the Jackson Park Site, and the UIC North Lawndale Site. PSOF¶¶ 19, 21, 39. Those sites were all ranked the top three sites by the Foundation. PSOF¶ 26. The City certainly could have withdrawn the Jackson Park Site from consideration because it required that the Presidential Center be built on public trust land that contains a dedication to be free to the public for use as a park. That would have left the Foundation to locate the Center either on the Washington Site or the UIC Site, which were the Foundation's first and third choices.



Alarmingly, the City has never performed any analysis of the best location from the City's perspective. PSOF¶¶ 30-32. The City has never even performed any analysis of whether it is more beneficial to locate a presidential center in a park, as opposed to locating the Center on non-park land. PSOF¶ 32.

There are several potential incidental benefits to the City and the State of locating the Presidential Center in any location in the City. PSOF¶ 27. Those benefits include jobs created by construction of the buildings, potential increased tourism, development of the surrounding community, and an educational benefit from having the Center located in Chicago. *Id.*

The City admits there is a benefit to the City when jobs are created by building buildings in the City. PSOF¶ 28. The City also admits that a Presidential Center could be built on any of the potential locations. *Id.* The City, however, never performed any analysis of the economic benefits to the City as a result of having the Presidential Center built on any particular location. *Id.*

Another potential benefit to the Center in any location would be an increase in tourism. PSOF¶ 28. The City, however, never performed any analysis of the increase in tourism that may result because of locating the Presidential Center at any of the available locations. PSOF¶ 29.

The City did not perform any analysis of any community development benefits to the City as a result of building the Center in one location versus other potential locations. PSOF¶ 28. The City did not perform any analysis as to any educational benefits to the City of Chicago or its residents as a result of locating the Center in one particular location as opposed to another location. PSOF¶ 29. In fact, the City never performed any study analyzing benefits to the City of the various sites that were proposed for the Presidential Center. PSOF¶¶ 30, 32.

There are also detriments to locating the Center in Chicago. PSOF¶ 31. The City, however, never performed any study or analysis of the detriments to the City at one location as opposed to another location. *Id.*

The City admits that it never performed any analysis that one location for the Center was more beneficial than another location from the City's perspective. PSOF¶¶ 30, 32. Remarkably, the City never performed any analysis that locating the Center on park land was more beneficial than locating the Center on non-park land. PSOF¶ 32.

The Following Chart Summarizes the Factors that the City Admitted It Never Considered in Deciding to Locate the Center in Jackson Park:

**Did the City of Chicago Consider These Factors in Deciding the Location of the Obama Presidential Center?**

Factors	YES	NO
Benefit of locating the Center in a park versus a non-park		X
Benefit of jobs generated by construction at potential locations		X
Tourism benefit in potential locations		X
Community development in potential locations		X
Educational benefit in potential locations		X
Detriments to the City in locating the Center in potential locations		X

PDX-2

After first finding that the Washington Site was the best location for the Presidential Center, the Foundation did an about face and chose the Jackson Park Site. PSOF¶ 64. The City then blindly followed along with the Foundation, without any analysis of the other locations.

The City Council passed an ordinance on October 31, 2018 (“2018 Ordinance”). PSOF¶ 41. The 2018 Ordinance approved the Foundation locating the Presidential Center at the Jackson Park Site, despite the City performing no analysis that the Jackson Park Site provided the greatest benefit to the City or the State taxpayers who are actually funding the Center in that location. The City decided to locate the Center in Jackson Park, which is the only potential location that is on public park land, public trust property. This, despite the fact that the City never performed an analysis that locating the Center in a park provided any benefit over locating the Center on non-park land. The very notion that locating myriad buildings on a park provides a greater benefit to the public than locating the buildings on non-park property is nonsensical. The benefits of a Presidential Center derive from the Center itself, not whether it is located in a park, across the street from a park, or remote from a park. The City has not, and cannot, present any evidence to the contrary.

To compound matters further, the City is locating the Center on public trust land at a staggering cost of over \$221.5 million to \$177 million more than locating the Center on the non-public trust land at the Washington Site. PSOF¶¶ 33-38. And UofC found that the Washington Site would provide the greatest economic benefit to the City. PSOF¶¶ 9-10. The cost savings to the public to locate the Presidential Center on the non-public trust property UIC Site is the full \$224 million to \$185.5 million. PSOF¶¶ 20, 33-38. The City withdrew the South Shore Site from consideration without any analysis whatsoever, so the City is unaware of the costs to the City and State to locate the Presidential Center on the South Shore Site. PSOF¶ 7.

The City cannot even seriously attempt to justify taking public trust property for the Presidential Center, when non-public trust property is available, by what the City has claimed is its “long history” of locating museums in parks. In actuality, the City has no history whatsoever of taking dedicated open park land and then building a museum on that park land, much less a “Presidential Center” which includes multiple single purpose buildings. PSOF¶¶ 49-63. Each of the museums or libraries in the City located on Park District land either were placed in existing buildings, or the Park District acquired the land after the museum was built. *Id.* The City and the Park District have never before used vacant park land to construct a museum or library. *Id.* Moreover, the only site that is consistent with the City locating museums in existing buildings is the South Shore Site, which contains the existing South Shore Cultural Center. The City, however, inexplicably removed that location from consideration.

The Defendants’ Scheme of the Park District Transferring the Jackson Park Site to the City, and the City Gifting the Jackson Park Site to the Foundation, is an Attempt to Do Indirectly What the Defendants Cannot Do Directly.

The Park District owned the Jackson Park Site. PSOF¶ 47. The Park District is and was bound by Section 10-7 of the Park District Code, 70 ILCS 1205/10-7, which provides that the Park District may lease land that it owns provided that the land continues to be used for a park, unless the park district obtains other real property of the same size or larger and of substantially the same or greater suitability for park purposes without additional cost. Further, that same section of the Park District Code provides that a Park District may convey its property to a non-governmental entity but only in exchange for real property suitable for a park, and of equal or greater value as determined by two appraisals.

The Park District and the City are well aware of the law prohibiting a transfer of park property unless the Park District obtains other suitable park land of equal or greater value. The

City and Park District, however, in an effort to evade that law, and as a massive benefit to the Foundation, devised a scheme where the Park District transferred the Jackson Park Site to the City, not in exchange for other multi-million dollar park land, but rather for the total sum of \$1.00. *Id.* The Defendants claim that the transfer was made pursuant to the Local Government Property Transfer Act, 50 ILCS 605/0.01 *et seq.* (Property Transfer Act). *Id.* As established in this Memorandum, however, the Property Transfer Act does not apply to authorize the Park District and City's back door transfer of the Jackson Park Site, for no consideration.

The Foundation Will Exclusively Possess, Occupy, and Exercise the Rights of Ownership Over the Jackson Park Site for at Least the Next Century.

The Presidential Center is a massive insertion into Jackson Park, taking over almost 20 acres of parkland. PSOF¶ 16. The campus will consist of a Museum Building approximately 235 feet tall; a Forum Building; a Library Building, a Program, Athletic and Activity Center; an underground parking garage; a Plaza, and exterior grounds. PSOF¶ 41. On October 31, 2018, the City enacted an ordinance that amends the 2015 Ordinance. The 2018 Ordinance notes that the Park District transferred the Jackson Park Site to the City. PSOF¶ 47. The 2018 Ordinance contains the City's approval for the Foundation to building the Center on the Jackson Park Site. PSOF¶ 41.

The 2018 Ordinance contains as attachments several agreements, including a "Use Agreement." PSOF¶ 41. The "Use Agreement" contains the terms under which the Foundation will construct, maintain and operate the buildings and improvements to the grounds that comprise the Presidential Center in Jackson Park. PSOF¶ 42. The Use Agreement provides that the Foundation has the right, and obligation, to construct all buildings comprising the Center, to operate and to maintain those buildings. *Id.* The Use Agreement also provides that the Foundation will improve, possess, and control all of the grounds that comprise the Jackson Park

Site. *Id.* The City has no right to possess any portions of the Jackson Park Site during the 99 year term. *Id.* City representatives only have the right to even enter the Jackson Park Site during operating hours, and for the purpose of inspecting and observing the Foundation's operation of the Jackson Park Site. *Id.* Further, the City only has the ability to inspect the interior of the buildings with minimum 48 hour notice to the Foundation. *Id.*

The buildings will be open to the public only during certain hours. PSOF¶ 43. The Center will charge fees for entry to the museum and also the parking garage on the Center. PSOF¶ 43.

The consideration for the Use Agreement is the payment of \$10 for the first 99 year term of the Use Agreement. PSOF¶ 44. Therefore, the Foundation is paying 10 cents per year for the right to exclusively possess the property. *Id.* The 10 cents per year is the only direct compensation that the City will receive from the Foundation. PSOF¶ 44. The Foundation is not paying any real estate taxes. *Id.*

Plaintiffs are individuals who reside in the State of Illinois. PSOF¶ 1. Plaintiff Protect our Parks, is a park advocacy group whose members consist of residents of the State of Illinois and the City of Chicago. *Id.* Plaintiffs move for summary judgment as to Counts I, II, III, and IV of their Complaint.

### **III.**

### **ARGUMENT**

As set forth below, Plaintiffs are entitled to partial summary judgment on three distinct claims: (i) violation of the public trust doctrine; (ii) violation of the due process clause; and (iii) Plaintiffs' *ultra vires* claims.

**A. THE DEFENDANTS' ACTIONS VIOLATE THE PUBLIC TRUST DOCTRINE AS A MATTER OF LAW**

1. The Public Trust Doctrine.

The public trust doctrine draws its basic tenets from private trust law. The legislature and municipal representatives are the primary trustees of the trust, and hold the land which is the situs of the trust for the benefit of the beneficiaries, i.e. the people of the State or municipality. *See, Ill. Cent. R.R. Co. v. Ill.*, 146 U.S. 387 (1892); *Lake Michigan Fed'n. v. U.S. Army Corps of Engineers*, 742 F.Supp. 441, 446 (N.D. Ill. 1990).

Because of the special obligations that governmental officials have as trustees in guarding public trust properties, courts have imposed a heightened standard of review of the performance of those obligations relative to such properties. A court is required to exercise a heightened level of scrutiny because the purpose "of the public trust doctrine is to police the legislature's disposition of public lands." *Lake Michigan Fed'n*, 742 F. Supp. at 446. "If courts were to rubber stamp legislative decisions, ... the doctrine would have no teeth. The legislature would have unfettered discretion to breach the public trust as long as it was able to articulate some gain to the public." *Id.*

This heightened scrutiny must be applied to determine whether the legislature's action violates the public trust under a number of different scenarios. For example, the public trust is violated if "certain property is held by a governmental body for a given public use; the governmental body has taken action that would cause or permit the property to be used for a purpose inconsistent with its originally intended public use; and such action is arbitrary or unreasonable." *See e.g., Paschen v. Village of Winnetka*, 73 Ill. App. 3d 1023, 1028, 392 N.Ed2d 306, 309 (1979). Further, "[w]hen a state holds a resource which is available for the free use of the general public, a court will look with considerable skepticism upon *any* governmental

conduct which is calculated *either* to reallocate that resource to more restricted uses *or* to subject public uses to the self-interest of private parties." (Emphasis in original) *People ex rel. Scott v. Chicago Park District*, 66 Ill. 2d 65, 360 N.E.2d 773 (1976). Moreover, the public trust doctrine is violated if the trustee fails to obtain a fair value for the trust property. *Tally v. Board of Supervisors*, 323 So. 2d 547, 549-50 (Miss. S. Ct. 1975), *see also*, Epstein, *The Public Trust Doctrine*, 7 Cato Journal 411, 426 (Fall 1987). Here, Defendants' actions violate the public trust under all of these scenarios.

2. Locating the Center in Jackson Park Violates the Public Trust Because It is Both Arbitrary and Unreasonable.

The Jackson Park Site is a public park, and is subject to the public trust. *See, Paepke v. Public Bldg. Com.*, 46 Ill. 2d 330, 333, 263 N.E.2d 11, 14 (1970). The Jackson Park Site is also subject to an express restriction that the land is to be used "as a public park, for the recreation, health and benefit of the public and free to all persons forever." The Illinois Supreme Court has ruled that this very language is a "restriction" on the use of the park. *Paepke*, 46 Ill. 2d at 333, 336, 263 N.E.2d at 14, 15.

a.) Locating the Center in Jackson Park is Arbitrary, As the City Failed to Consider Non-Public Trust Alternatives.

Locating the Presidential Center on the Jackson Park Site is arbitrary on several levels. The undisputed facts establish that in terms of options for the Presidential Center, the City essentially abdicated the decision largely to private parties such as the University of Chicago and the Obama Foundation. The uncontradicted facts prove that the City has no basis to locate the Presidential Center on public trust Jackson Park land. The City has at least two alternatives for locating the Center in Chicago, the Washington Site and the UIC Site, neither of which require that the Center be built on public trust land. The City has never performed any analysis that



locating the Presidential Center on public trust park land provides any benefit whatsoever over locating the Presidential Center on non-public trust property. Indeed, there is no rational basis for the notion that locating a Presidential Center on public trust property will necessarily provide a benefit greater than locating the Center on available non-public trust property.

The arbitrariness of the decision is further supported by the fact that the City never performed any analysis of the best location for the Center from the City of Chicago's perspective. The residents of the City of Chicago and State of Illinois will pay at least an estimated \$224 million to \$185.5 million to locate the Center in Jackson Park. The City has only estimated costs at approximately \$2.5 million to \$6.9 million to locate the Center at the Washington Site. The City has not estimated any costs to locate the Center at the UIC Site.

Moreover, the City cannot rely on its tired, factually inaccurate assertion that the City has a long history of locating museums and libraries in parks. The City and the Park District have never before used vacant park land to construct a museum or library. PSOF¶¶ 49-63.

What in actuality has occurred is that the City blindly agreed to simply let the Foundation build the Presidential Center in any location that benefitted the Foundation. While the City and the State are poised to spend over an estimated \$224 million to locate the Center in Jackson Park, the City has not even bothered to determine what is in the best interests of the City and the State's taxpayer residents -- the persons who are actually paying for the Center. This is the exact scenario the public trust doctrine is designed to protect against, as the public trust doctrine is intended to guard public trust land from uninformed, arbitrary legislative decisions. *See, Lake Michigan Fed'n*, 742 F. Supp. at 446 (purpose of public trust doctrine "is to police the legislature's disposition of public lands.").

In analogous situations, Courts have found such transfers to be violative of the public trust doctrine. For example, in *Scott*, the Illinois Supreme Court expressly rejected conclusory and unsupported statements that “additional employment and economic improvement [as] too indirect, intangible and elusive to satisfy the requirements,” requiring much more detail and support to justify such a transfer. *Scott*, 66 Ill. 2d at 80-81, 360 N.E 2d at 780-81. The court emphasized that such additional scrutiny was important given other public concerns as “there has developed a strong, though belated, interest in conserving natural resources and in protecting and improving our physical environment. The public has become increasingly concerned with dangers to health and life from environmental sources and more sensitive to the value and, frequently, the irreplaceability of natural resources.” *Scott*, 66 Ill. 2d at 79, 360 N.E 2d 2d at 780. *See also, Lake Michigan Fed’n.*, 742 F. Supp at 446 (“the self-serving recitation of a public purpose within a legislative enactment is not conclusive of the existence of such purpose.”). This precise concern is important in the case at bar as well, given the iconic status of Jackson Park.

The core inquiry is whether the City had taken steps to make the City itself sufficiently informed to make an independent business judgment about the project, and whether the deal in question, which transfers the right to use and control of irreplaceable public park land to a private entity for 99 years, is sufficiently advantageous to the City. As described above, the answer is a resounding “No,” and precisely why judgment must be entered in favor of Plaintiffs.

b.) Locating the Presidential Center in Jackson Park is Unreasonable.

The City has control over the location of the Presidential Center. That is obvious by the City’s unilateral decision to remove the South Shore Site from consideration. Remarkably, the City chose the only location that would even implicate the public trust doctrine, rather than locating the Center on non-public trust land. The City also chose the only location that has a

restriction that the land be maintained as a public park, free to all persons. Further, the City chose to locate the Center on the only property registered with the National Register of Historic Places.

Locating the Presidential Center in Jackson Park is also unreasonable because the estimated cost to locate the Presidential Center in Jackson Park is at least somewhere between \$221.5 million and \$178 million more than the costs to locate the Center at the Washington Site, and a full \$224 million to \$185.5 million more than costs estimated by the City to locate the Center at the UIC Site – all with no additional benefit to the City or State. In fact, UofC and its economic consultant found that the Washington Park would provide the greatest economic benefit to the City.

3. Locating the Center in Jackson Park Violates the Public Trust Because the Governmental Conduct Reallocates Jackson Park To More Restricted Uses.

The Illinois Supreme Court has expressly held that governmental action will violate the public trust when a state holds a resource which is available for the free use of the general public and governmental conduct reallocates that resource to more restricted use. *Scott*, 66 Ill. 2d at 78, 360 N.E.2d at 780. *See also, Lake Michigan Fed’n.*, 742 F. Supp at 446.

The Jackson Park Site is subject to a restriction that the Jackson Park Site is to be used “as a public park, for the recreation, health and benefit of the public, and free to all persons forever.” Defendants’ actions are reallocating the open, free public park to a more restrictive use by authorizing the Foundation to erect numerous building that will not be open and free, and will have restricted and paid access. PSOF¶ 43.

The uncontradicted facts at bar are analogous to the opinion in *Lake Michigan Fed’n.*, 742 F. Supp. 441. In *Lake Michigan Fed’n.*, Loyola University developed a plan to construct a lakefill on approximately 20 acres of lakefront property owned by the University. The lakefill

would contain bike and walking paths, a seawall, and lawn areas along the lake shore. The public would have unrestricted access to these areas. The Illinois legislature conveyed land that was held in public trust to the university for the purpose of the lakefill expansion. Lake Michigan Federation sued under the public trust doctrine to prevent the lakefill.

Loyola argued that the court should not apply the public trust doctrine because the lakefill will increase the public's opportunity to enjoy that portion of the lakefront. The existing shoreline did not have a private right of access, and Loyola claimed that the public would be in a better position to enjoy the lake if Loyola was allowed to complete its project.

The court rejected Loyola's argument as "seriously flawed," and held:

Loyola ignores the fact that the public will have to sacrifice 18.5 acres of publicly held land in order to obtain a coastline to which it has unlimited access. Moreover, it glosses over the fact that the public is actually gaining nothing. The public currently has unrestricted access to the submerged lands which will become the new coastline. In reality, the public is losing its right of access to the portion of the lake which would become the interior portion of the lakefill. In essence, Loyola's argument that the public will gain from the construction of the lakefill is merely a value dependent assessment of the best use of the property. This judgment is not only highly subjective, but also irrelevant to an analysis of the propriety of a grant of public land.

742 F. Supp at 446.

The *Lake Michigan Fed'n.*'s court's analysis applies here. The public has access to the Jackson Park Site, which is public trust property. The public will lose its right of access to the portions of Jackson Park that will contain the numerous buildings that comprise the Presidential Center, all with the sacrifice of almost 20 acres of this rare Olmsted designed landscape. The Presidential Center will restrict access to the Jackson Park Site, and therefore locating the Center on the Jackson Park Site violates the public trust.

Moreover, the Defendants cannot be heard to argue that the Presidential Center is the best use of the Jackson Park Site. The *Lake Michigan Fed'n.* court expressly ruled that such a value

dependent assessment is not only highly subjective, but is also irrelevant under the public trust doctrine analysis. *Lake Michigan Fed'n*, 742 F. Supp at 446.

4. The Defendants' Actions Violate the Public Trust Because the Presidential Center Primarily Benefits The Foundation.

The essence of the public trust doctrine was summarized in *Friends of the Parks v. Chicago Park Dist.*, 2015 U.S. Dist. LEXIS 30291 \*10 (N.D. Ill. March 12, 2015), as follows:

Under the public trust doctrine, the State cannot "abdicate its trust over property in which the whole people are interested . . . so as to leave them entirely under the use and control of private parties. (citations omitted). The purpose of the public trust doctrine "is to police the legislature's disposition of public lands." "If courts were to rubber stamp legislative decisions, the doctrine would have no teeth. The legislature would have unfettered discretion to breach the public trust as long as it was able to articulate some gain to the public. (citations omitted).

Three basic principles can be distilled from this body of public trust case law. First, courts should be critical of attempts by the state to surrender valuable public resources to a private entity. . . . Second, the public trust is violated when the primary purpose of a legislative grant is to benefit a private interest. . . . Finally, any attempt by the state to relinquish its power over a public resource should be invalidated under the doctrine.

The public trust doctrine requires that a court invalidate government action that primarily benefits a private interest on public trust property. In this case, the Foundation, as well as the University of Chicago, primarily benefit from the Center, not the City. The reasoning in *Lake Michigan Fed'n* is again analogous to the uncontradicted facts in this case.

The *Lake Michigan Fed'n* court held that while Loyola's proposed project had some aspects which are beneficial to the public,

the primary purpose of the grant is to satisfy a private interest. Loyola sought and received the grant in order to satisfy its desire for a larger campus. The improvement of Hartigan Park Beach, erosion protection and other measures may benefit the public, but these benefits are only incidental to the primary and private goal of enlarging the Loyola campus. While such improvements may have made the project more palatable to Illinois legislators, the inescapable truth is that the

lakebed property will be sacrificed to satisfy Loyola's private needs. Under the public trust doctrine, such a sacrifice cannot be tolerated.

*Lake Michigan Fed'n*, 742 F. Supp at 445.

Here, the Use Agreement abdicates possession, use and control of the entire Jackson Park Site to the Foundation for at least the next century. The primary purpose of the legislative grant to the Foundation is to benefit the private Foundation.

The Foundation wants to operate a museum and Presidential Center. In fact, the Use Agreement drafted by the City specifically states that the core project of the Foundation is “to build the Presidential Center in Jackson Park.” PSOF¶ 46. The Use Agreement further provides that “[t]he central mission of the Presidential Center is to house and operate a presidential museum that will present President and Mrs. Obama's story within the broader story of American history, the history of civil rights, and the powerful place of Chicago in American history. The museum will frame President and Mrs. Obama's lives and careers, the 2008 and 2012 presidential elections, and the Obama Presidency in the context of the movements and milestones that helped to shape the Nation over time.” *Id.*

Further, the very scheme pursuant to which the Park District transferred the Jackson Park Site to the City for \$1.00, so that the City could in turn flip the land to the Foundation for 10 cents per year, was done solely to benefit the Foundation, to the detriment of the Park District and the City.

Section 10-7 of the Park District Code, 70 ILCS 1205/10-7, provides that the Park District may lease land that it owns provided that the land continues to be used for a park, unless the park district obtains other real property of the same size or larger and of substantially the same or greater suitability for park purposes without additional cost. Further, that same section of the Park District Code provides that a Park District may convey its property to a non-

governmental entity but only in exchange for real property suitable for a park, and of equal or greater value as determined by two appraisals. The Park District Code therefore requires that the Park District obtain at least equal, fair value compensation for either leasing or transferring Park District owned land.

Here, the Park District received total of \$1.00 for transferring almost 20 acres in Jackson Park to the City. PSOF¶ 47. The Park District did not receive any other compensation, whether direct or indirect. *Id.* The City is then only receiving 10 cents per year for essentially transferring ownership of the Jackson Park Site to the Foundation for the next century. PSOF¶ 44. The only purpose of that absurd arrangement is the benefit the Foundation. It certainly provides no direct benefit to the Park District or the City.

While there may be collateral benefits to the City and State, not only are they conclusory and without basis (as demonstrated by the City's admission that it conducted no analysis), any benefits are only incidental to the primary and private goal of the Foundation and its relationship with the University of Chicago in operating a Presidential Center that seeks to preserve and enhance the legacy of the former President and his wife. Therefore, the attempt by the Park District and City to relinquish possession and control over the Jackson Park Site must be invalidated under the public trust doctrine.

5. The Defendants Actions Violate the Public Trust Because the City Is Not Receiving Fair Value for the Jackson Park Site.

The Foundation's mere payment of an outrageously low ten cents (\$0.10) per year for use of the Jackson Park Site is akin to the payment of no consideration whatsoever, which clearly violates the public trust doctrine. The facts and controlling authority in this case mirror a similar line of cases involving Mississippi's treatment of public trust property known as "sixteenth section lands," the title to which is in the name of the state but that it holds "in trust for the

support of the public schools of the township wherein the same is situated.” *Tally v. Board of Supervisors*, 323 So. 2d 547, 549-50 (Miss. S. Ct. 1975) (citing *Jefferson Davis County v. James-Sumrall Lumber Co.*, 49 So. 611 (Miss. S. Ct. 1909)). This confers jurisdiction and control over sixteenth section lands “through their respective boards of supervisors...to be exercised, of course, within the terms of the original trust.” *Id.* Accordingly, the Mississippi Supreme Court held that, by extension, the boards of supervisors acting as the trustees of public trust property are under a duty to ensure that any lease of trust property is for a reasonable rental and not a nominal one and, furthermore, that the rules applicable to trusts and trust property in general are to be applied. In *Tally*, the Mississippi Supreme Court held in relevant part as follows:

This Court is committed to the proposition that these lands constitute property held in trust for the public schools and must be dealt with by boards of supervisors as such, and thus the rules applicable to trusts and trust property generally are to be applied. (citation omitted).

Boards of Supervisors, as trustees, are under a duty to lease sixteenth section lands for a reasonable rental and not a nominal one. 54 Am.Jur. *Trusts* section 471 (1945) states:

The implication and exercise of the power of a trustee to lease must be reasonable with regard to the rights of beneficiaries, the nature of the property, the uses to which it advantageously may be put, and the usual and customary methods of dealing with such property in the [\*\*8] locality where it is situated. This rule is applicable to the determination of the rent, the period of the lease, and rights granted under the lease. (54 Am.Jur. at 374).

90 C.J.S. *Trusts* § 319 (1955) states:

Where trustees possess power to lease trust property they may lease it on such terms, conditions, and rentals as are reasonable and customary for that class of property in the particular vicinity. (90 C.J.S. at 497).

A trustee is required to charge a reasonable rental for property of the trust which has been leased, and a lease of trust property will be set aside where it is for a nominal rental. In determining whether or not a rent is reasonable, regard is to be had to the character of the property, values assigned to rental space, the purpose of the trust, the local custom with respect to similar property, and all the conditions attending the execution of the lease. (90 C.J.S. at 499).

*Tally*, 323 So. 2d at 550 (citing 54 Am.Jur. *Trusts* section 471 (1945) and 90 C.J.S. *Trusts* § 319 (1955)) (emphasis supplied).



Likewise, in the instant case, the fundamental rules governing public trust property prohibit Defendants from simply giving away public trust property under their ownership, supervision and control to the Foundation for only nominal rent to use in the service of its private agenda(s). *See, Id.* Instead, the City was required to charge a reasonable rent with due regard given to “the character of the property, values assigned to rental space, the purpose of the trust, the local custom with respect to similar property, and all the conditions attending the execution of the lease.” *Id.*; *accord, Mauldin v. Molpus*, 647 F. Supp. 891, 896 (S.D. Miss. 1986) (citing Mississippi Supreme Court decisions wherein the Court invalidated annual leases of public trust property for .40 cents per acre, .53 cents per acre, and .25 cents per acre); *see also, RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1153 (9<sup>th</sup> Cir. 2004) (holding that a city cannot contract out of its duties as trustee of public trust property).

Further, courts apply a heightened level of scrutiny to any legislative action related to public trust property, because the purpose “of the public trust doctrine is to police the legislature's disposition of public lands.” *See, Lake Michigan Fed'n*, 742 F. Supp. at 446. The heightened scrutiny applicable to decisions related to public trust property mirrors the type of scrutiny that is applied to eminent domain cases. In eminent domain cases, the Takings Clause commands that private property not be taken for public use without just compensation. The public trust doctrine similarly demands that public property should not be given to private use without just compensation:

The public trust doctrine is the mirror image of the eminent domain clause. Both are designed to place limitations on the power of the legislature to divert property, whether held privately or in common, from A to B, or more generally from a group of As to a group of Bs. Both doctrines derive from a strong sense of equity that condemns these uncompensated transfers as a genteel form of theft, regardless of whether the holdings are public or private.

Epstein, *The Public Trust Doctrine*, 7 Cato Journal 411, 426 (Fall 1987).

In a typical eminent domain case, the government is prohibited from taking property from a private party to serve a primarily private purpose. In such cases, a heightened scrutiny is applied to the determination of whether there was in fact a public use associated with the taking. For example, in *Sw. Ill. Dev. Auth. v. Nat'l City Envtl., L.L.C.*, 199 Ill.2d 225, 239, 768 N.E.2d 1, 21-22 (2002), the Illinois Supreme Court rejected an argument that the “wisdom . . . of the legislation and the ‘means of executing the project’ are beyond judicial scrutiny ‘once the public purpose has been established.’ . . . We disagree. The Constitution and the essential liberties we are sworn to protect control.” *Id.* at 242. Given the number of individuals impacted by the transfer of public trust property, the need to scrutinize transactions that may be tainted with fraud, conflicts, and/or failure to ensure fair value is warranted.

In the present case, it is undisputed that the City made no effort to determine a fair value of any sort associated with the destruction and transfer of Jackson Park. PSOF¶ 40. Instead, the undisputed facts reveal that the City and the Park District are not receiving anywhere near fair value in exchange for abdicating their rights in Jackson Park. The City is allowing the Foundation exclusive possession and use of Jackson Park for less than 10 cents per year for at least 99 years after completion of the construction. The City admits that 10 cents per year is the only direct compensation that the City will receive from the Foundation. PSOF¶ 44. The City has stipulated that it has no idea of the fair market value of the Jackson Park Site. PSOF¶ 40. Further, the City has stipulated that it has no idea of the fair market rental value of the Jackson Park Site. PSOF¶ 40. Therefore, the City has no basis whatsoever to charge a fee of a scant 10 cents per year for the next century for the Foundation’s exclusive use and possession of the Jackson Park Site. Even worse, the selection of the Jackson Park Site actually penalizes the

public to the tune of roughly \$200 million for roadway and other construction not required at other sites.

**B. SUMMARY JUDGMENT IS APPROPRIATE ON PLAINTIFFS' DUE PROCESS RIGHTS**

A plaintiff in a Fourteenth Amendment procedural due process claim must prove that (1) the plaintiff had a constitutionally protected property interest, (2) the plaintiff suffered or will suffer a loss of that interest amounting to a deprivation, and (3) the deprivation occurred without due process of law. *See e.g., LaBella Winnetka, Inc. v. Vill. of Winnetka*, 628 F.3d 937, 943-44 (7th Cir. 2010). The Constitution does not create property interests; rather, protected property interests must derive from an independent source such as state law. *Buttitta v. City of Chicago*, 9 F.3d 1198, 1201 (7<sup>th</sup> Cir. 1993) (citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538 (1985), and *Bd. of Regents v. Roth*, 408 U.S. 564, 570 (1972)).

Plaintiffs' due process claim is that the Jackson Park Site is public trust property. The Jackson Park Site contains a restriction placed on the property by the State of Illinois legislature. The restriction on the property is that the property shall be used as a "public park . . . free to all persons forever." The scheme devised by Defendants and the Use Agreement between the City and the Foundation prove that, if not enjoined by this Court, the Jackson Park Site will not be a "public park . . . free to all persons forever."

The Illinois legislature has not authorized the transactions at issue between the Park District, the City and the Foundation, nor has the Illinois legislature released the restriction on the Jackson Park Site. Therefore, the Defendants actions violate Plaintiffs' procedural due process rights.

1. Plaintiffs Have a State Law Property Interest.

Plaintiffs in this case indisputably have a property interest in their rights under the public trust doctrine, and the restriction that exists on the Jackson Park Site. Plaintiffs reside in Chicago and in Illinois. PSOF¶ 1. Plaintiff, Protect our Parks, is an organization whose members include persons who reside in Chicago and pay taxes in Chicago and the State of Illinois. *Id.* Plaintiffs are members of the public, and taxpayers who are beneficiaries of the public trust that exists over Jackson Park. *Id.*

This Court has already expressly ruled in this case that the Plaintiffs have a state law property interest, in its holding that the Plaintiffs have standing under the public trust doctrine:

If "the 'public trust' doctrine is to have any meaning or vitality at all, the members of the public, at least taxpayers who are the beneficiaries of that trust, must have the right and standing to enforce it." *See Friends of the Parks v. Chicago Park Dist.*, No. 14-cv-09096, 2015 U.S. Dist. LEXIS 30291, 2015 WL 1188615, at \*3 (N.D. Ill. 2015) (citing *Paepcke v. Public Bldg. Com.*, 46 Ill. 2d 330, 263 N.E.2d 11, 18 (Ill. 1970) (holding that a group of taxpayers who sued to prevent the implementation of plans to construct facilities on public parks had standing under the public trust doctrine)). Therefore, alleging that "rights under the public trust doctrine are being deprived without procedural due process . . . so as to violate the federal Constitution," sufficiently establishes Article III standing. *Id.* In other words, plaintiffs alleging that "lands held in the public trust are imminently in danger of being altered by the actions of defendants" have identified a "concrete injury" that can be "redressed by a favorable court decision." *Id.* (citing *Lujan*, 504 U.S. at 560-61).

Here, Individual Plaintiffs allege that Defendants have placed Jackson Park—land held in the public trust—in imminent danger of alteration, and thus that Defendants are depriving them of their rights under the public trust doctrine without procedural due process. *See* [91] ¶¶ 6, 58-86. Therefore, Individual Plaintiffs, as Illinois taxpayers and beneficiaries of the public trust, have established Article III standing as to their Due Process claim under the public trust doctrine.

Memorandum Opinion and Order dated February 19, 2019 [Dkt. No 93] at pages 11-12. *See also, Friends of the Parks v. Chicago Park Dist.*, No. 14-cv-09096, 2015 WL 1188615, at \*3 (N.D. Ill. 2015) (citing *Paepcke*, 263 N.E.2d at 18 (holding that a group of taxpayers who sued to

prevent the implementation of plans to construct facilities on public park had state law property interest and standing under the public trust doctrine)).

This Court's decision that Plaintiffs have a state property right in Jackson Park is consistent with existing Northern District of Illinois, Illinois Supreme Court, and Illinois Appellate Court precedent. *See, e.g., Friends of the Parks*, 2015 U.S. Dist. LEXIS 30291 at \*26; *Friends of the Park v. Chicago Park Dist.*, 160 F. Supp. 3d 1060, 1064 (N.D. Ill. 2016);<sup>2</sup> *Paepcke*, 46 Ill. 2d 330, 341-42; *Fiala*, 2014 Ill. App. Unpub. LEXIS 916 at \*9-\*11. The Illinois Supreme Court's opinion in *Paepcke* held that parkland owned by the Chicago Park District is subject to the public trust doctrine, and that the residents have a right to enforce the public trust on parkland. *Paepcke* also held that residents have a property right to enforce a restriction on the use of public parkland, unless the Illinois legislature has released that restriction.

In *Paepcke*, the Park District sought to convey to the City of Chicago Public Building Commission land in Washington Park for the Commission to construct a middle school to be leased to the Chicago Board of Education. The Illinois legislature deeded Washington Park to the South Park Commissioners (predecessor to the Chicago Park District), with the express restriction that "when acquired by said Commissioners, as provided by this act, shall be held, managed and controlled by them and their successors, as a public park, for the recreation, health and benefit of the public, and free to all persons forever." The court found that "[s]uch a dedication having been made by the sovereign, the agencies created by it hold the properties in trust for the uses and purposes specified and for the benefit of the public." *Paepcke*, 46 Ill. 2d at 336, 263 N.E.2d at 15. The *Paepcke* court then ruled that citizens have a public property right

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<sup>2</sup> The *Friends of the Park* decisions are collectively referred to as the *Lucas Museum* Opinions.

to enforce a restriction on park land owned by the Chicago Park District, which in *Paepcke* the plaintiffs sought to enforce though an alleged breach of the public trust. *Id.*

Following the precedent of *Paepcke* and other authorities, the court in the *Lucas Museum* Opinions ruled that individual citizens of the State of Illinois and a park advocacy group, Friends of the Parks, had a property interest in land held by the Chicago Park District, which the Park District sought to lease to a non-profit organization for construction of the Lucas Museum. In that case, Judge Darrah ruled, on two separate occasions, that each taxpayer of Illinois has a fractional beneficial interest in the property that the State of Illinois holds in trust for them, so as to create a protectable property interest. *Friends of the Parks*, 2015 U.S. Dist. LEXIS 30291 at \*26; 160 F. Supp. 3d at 1064. *See also, Fiala*, 2014 Ill. App. Unpub. LEXIS 916 at ¶ 23 (Illinois Appellate Court ruled that resident has state law property interest in sanitary district's property).

Thus, as held in *Paepcke*, the *Lucas Museum* Opinions, and *Fiala*, Plaintiffs are the beneficial owners, if not full owners, of the Jackson Park Site — and while not the holders of legal title, each citizen is the “real party in interest” as to his or her fractional share. *See also, Carlson v. U.S.*, 126 F.3d 915, 924-25 (7th Cir. 1997) (quoting *People v. CT&T Co.*, 75 Ill. 2d 479, 492-93 (1979)) (“in regard to an Illinois land trust, for tax purposes ‘true ownership lies with the beneficiaries though title lies with the trustee’”).

As beneficial owners, Plaintiffs have the right—a property right—to exclude uses of the property that are inconsistent with the dedicated, and restricted, right of use. That is literally the meaning of a property right. *See, e.g., Kaiser Aetna v. U.S.*, 444 U.S. 164, 179-80 and n.11 (1979) (noting that the “right to exclude” is “universally held to be a fundamental element of the property right”). *See also, People ex rel. Scott*, 66 Ill. 2d at 78-80, 360 N.E.2d at 780-82 (expanding property interest to right to preserve open space as a natural resource).

2. Plaintiffs' State Law Property Interest Is In Imminent Danger of Alteration.

The Park District has already transferred the Jackson Park Site to the City of Chicago. The City of Chicago has enacted the 2018 Ordinance which allows the Foundation to build the Presidential Center on public trust Jackson Park land. The City has approved the Use Agreement with the Foundation which provides the terms under which the Foundation will build and operate the Presidential Center and the Jackson Park Site's grounds. Therefore, absent relief in this case, Plaintiffs' public trust interest will be forever, permanently impaired.

3. Plaintiffs' Property Interest Will Be Impaired Without Due Process of Law.

It is undisputed that the Park District transferred the Jackson Park Site to the City, and the City is transferring use and possession of the Jackson Park Site to the Foundation for the next at least 99 years, for a use inconsistent with the restriction on Jackson Park. It is also undisputed that the Illinois legislature has never enacted legislation releasing the restriction on the Jackson Park Site and authorizing the transactions between Defendants and the Foundation.

The fact at bar are analogous to the court's decisions in the *Lucas Museum* Opinions. Plaintiffs in *Friends of the Parks* brought suit against the Chicago Park District for a procedural due process violation, violation of the public trust and other causes of action. The Park District proposed to enter into a ground lease with the Lucas Museum pursuant to which the Museum would have exclusive control over formerly submerged land in the City of Chicago. The Illinois legislature did not specifically approve the Park District entering into a long-term lease with the Lucas Museum.

The City and Park District moved to dismiss, arguing that the Illinois Park District and Museum Act, 70 ILCS 1290/1 *et seq.*, authorized the construction of the museum and the long-term ground lease. The court disagreed, and denied the City and Park District's motion to

dismiss. 2015 U.S. Dist. LEXIS 916. The City and Park District again moved to dismiss after the Illinois legislature amended the Museum Act. The court once again found that the amendment to the Museum Act did not authorize the ground lease to the Lucas Museum, declaring:

Plaintiffs, however, plead that the General Assembly, in enacting the legislation purportedly transferring control of the property, did not “refer specifically to the alienation, forfeiture or disposition of the land that is subject of the ground lease.” (FAC ¶ 53.) Plaintiffs have alleged that, by failing to provide specific approval for the transfer of the subject land, the General Assembly has acted in violation of Plaintiffs’ right to due process. Construing the allegations in Plaintiffs’ favor, Plaintiffs have sufficiently stated a procedural due-process claim under the Fourteenth Amendment. Thus, Defendants’ Motion to Dismiss is denied with respect to Count I.

160 F. Supp 3d at 1064-65.

The same rationale and holding are directly applicable here. The Illinois legislature has never authorized the transaction at issue nor has the Illinois legislature released the restriction on the Jackson Park Site.

The Museum Act does not authorize the transaction at issue or release the restriction. The Amendment to the Museum Act adding language allowing “presidential libraries, centers, and museums” does not lift the restriction, because the amendment to Museum Act specifically provides: “[t]he changes made to this Section by this amendatory Act of the 99th General Assembly are declaratory of existing law and shall not be construed as a new enactment.” 70 ILCS 1290/0/01. Thus, the legislature itself claims that the Museum Act is not new legislation, or legislation that would expressly or implicitly lift the restriction on Jackson Park for the newly-proposed Presidential Center. Further, the Museum Act does not even apply to the undisputed facts in the case, as established in Section C.1. of this Motion.



For these reasons, judgment should be entered for the Plaintiffs on their procedural due process claim.

**C. PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT ON THEIR *ULTRA VIRES* CLAIMS**

This Court stated many times that “[t]he primary rule of statutory construction is to give effect to the intention of the legislature.” *Baltimore & O. R. Co. v. Chicago River & I. R. Co.*, 170 F.2d 654, 658 (7th Cir. 1948); *see also Davis v. Toshiba Mach. Co.*, 186 Ill. 2d 181, 183, 710 N.E.2d 399, 401 (Ill. 1999) (“The primary rule of statutory construction is to give effect to legislative intent by first looking at the plain meaning of the language.”). To that end, the U.S. Supreme Court stated, “We have stated time and again that *courts must presume that a legislature says in a statute what it means and means in a statute what it says there*. When the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’” *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 461–62 (2002) (citing *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–254 (1992)) (emphasis added). Accordingly, the courts “*will not alter the text* [of a statute or code] in order to satisfy the policy preferences . . . .” *Id.*; *see also City of Chicago v. Cotton*, 356 Ill. App. 3d 1, 5, 826 N.E.2d 405, 408 (Ill. App. 2005). Here, the clear, unambiguous wording of the Illinois Museum Act and the Property Transfer Act prove that those Acts do not apply to authorize the Defendants’ scheme to transfer the Jackson Park Site to the City and for the City to authorize the Use Agreement.

**1. The Express Terms of the Museum Act Prove that the Museum Act Does Not Apply to the Presidential Center.**

Section 1. of the Museum Act, 70 ILCS 1290/0.01, states, in relevant part, as follows:

Sec. 1. Erect, operate, and maintain aquariums and museums. The corporate authorities of cities and park districts having control or supervision over any public park or parks, including parks located on formerly submerged land, are hereby authorized to purchase, erect, and maintain within any such public park or parks edifices to be used as aquariums or as museums of art, industry, science, or

natural or other history, including presidential libraries, centers, and museums, such aquariums and museums consisting of all facilities for their collections, exhibitions, programming, and associated initiatives, or to permit the directors or trustees of any corporation or society organized for the construction or maintenance and operation of an aquarium or museum as hereinabove described to erect, enlarge, ornament, build, rebuild, rehabilitate, improve, maintain, and operate its aquarium or museum within any public park now or hereafter under the control or supervision of any city or park district, and to contract with any such directors or trustees of any such aquarium or museum relative to the erection, enlargement, ornamentation, building, rebuilding, rehabilitation, improvement, maintenance, ownership, and operation of such aquarium or museum. Notwithstanding the previous sentence, a city or park district may enter into a lease for an initial term not to exceed 99 years, subject to renewal, allowing a corporation or society as hereinabove described to erect, enlarge, ornament, build, rebuild, rehabilitate, improve, maintain, and operate its aquarium or museum, together with grounds immediately adjacent to such aquarium or museum, and to use, possess, and occupy grounds surrounding such aquarium or museum as hereinabove described for the purpose of beautifying and maintaining such grounds in a manner consistent with the aquarium or museum's purpose, and on the conditions that (1) the public is allowed access to such grounds in a manner consistent with its access to other public parks, and (2) the city or park district retains a reversionary interest in any improvements made by the corporation or society on the grounds, including the aquarium or museum itself, that matures upon the expiration or lawful termination of the lease.

The first sentence of Section 1 of the Museum Act contains several important concepts.

As an initial matter, the entire first sentence relates only to “edifices.” The Museum Act authorizes cities having control or supervision over a public park to “purchase, erect, and maintain” within a public park certain “edifices.” The Museum Act states that a city may “purchase, erect and maintain” “edifices” to be used as “aquariums or as museums of art, industry, science, or natural or other history, including presidential libraries, centers, and museums...” The first portion of the first sentence does not apply to the Presidential Center at issue, because the City is not “purchasing, erecting and maintaining” any edifices (buildings).

The next portion of the first sentence of Section 1 states that in the alternative to a city purchasing, erecting and maintaining edifices used as a museum, a city may permit any corporation organized for the construction or maintenance and operation of a museum to erect,

enlarge, ornament, build, rebuild, rehabilitate, improve, maintain, and operate its museum (edifice) within any public park and to contract with any such directors or trustees of any such aquarium or museum relative to the erection, enlargement, ornamentation, building, rebuilding, rehabilitation, improvement, maintenance, ownership, and operation of such aquarium or museum.

The second sentence of Section 1 of the Museum Act then states, in full, as follows:

Notwithstanding the previous sentence, a city or park district may enter into a lease for an initial term not to exceed 99 years, subject to renewal, allowing a corporation or society as hereinabove described to erect, enlarge, ornament, build, rebuild, rehabilitate, improve, maintain, and operate its aquarium or museum, together with grounds immediately adjacent to such aquarium or museum, and to use, possess, and occupy grounds surrounding such aquarium or museum as hereinabove described for the purpose of beautifying and maintaining such grounds in a manner consistent with the aquarium or museum's purpose, and on the conditions that (1) the public is allowed access to such grounds in a manner consistent with its access to other public parks, and (2) the city or park district retains a reversionary interest in any improvements made by the corporation or society on the grounds, including the aquarium or museum itself, that matures upon the expiration or lawful termination of the lease.

The second sentence of Section 1 begins as follows: “Notwithstanding the previous sentence...” The prefatory language of the second sentence, “[n]otwithstanding the previous sentence,” means that if there is a conflict with the first sentence, the terms of the second sentence prevail.

The second sentence goes on to state that the City may enter into a 99 year “lease” with a corporation organized to erect, operate, and maintain a museum “together with grounds immediately adjacent to such aquarium or museum, and to use, possess, and occupy grounds surrounding such aquarium or museum as hereinabove described for the purpose of beautifying and maintaining such grounds in a manner consistent with the aquarium or museum's purpose.”

Therefore, while the first sentence of Section 1 of the Act only applies to a situation involving the building or operation of solely edifices, the second sentence of Section 1 applies to

a City allowing a corporation to erect, maintain and operate its edifices together with grounds immediately adjacent to the edifices and where the corporation is using, possessing and occupying those grounds. In that instance, the City is only allowed to enter into a “lease” with the corporation to build, operate and maintain the edifices.

Further, the second sentence of Section 1 of the Museum Act requires that the “lease” must have certain terms. The first term is that the initial lease term may not exceed 99 years. The second required lease term is that the corporation leasing the grounds must allow public access to the grounds consistent with other parks. The third required lease term is that all improvements made on the grounds, including the edifices, must revert to the City “at the expiration or lawful termination of the lease.”

The Use Agreement at issue establishes that the City is allowing the Foundation to erect, maintain and operate its Center together with the grounds immediately adjacent to the Center and to use, possess and occupy those grounds. Therefore, Museum Act would only authorize the City to allow the Foundation to erect, maintain and operate a Center together with the grounds that comprise the Jackson Park Site if the terms are consistent with the second sentence of Section 1 of the Museum Act. A review of the Use Agreement, however, proves that the Museum Act does not authorize the City’s Use Agreement with the Foundation.

The Use Agreement expressly states that the Foundation is erecting, maintaining and operating the Center together with the grounds immediately adjacent to the museum and is using, possessing and occupying those grounds. Section 2.1 of the Use Agreement provides as follows:

**Section 2.1 Grant.** Subject to the terms, provisions, covenants, agreements and conditions of this Agreement, the City hereby gives and grants to the Foundation for the Term the following rights with respect to the Subject Property:

(a) the right to construct and install the Project Improvements (including the Presidential Center);

(b) the right to occupy, use, maintain, operate and alter the Presidential Center Architectural Spaces; and

(c) the right to use, maintain, operate and alter the Presidential Center Green Space and Green Spaces.

PSOF¶ 41, Exhibit C to Roth Declaration {Exhibit 4}.

The Use Agreement grants the Foundation the right to construct all of the Project Improvements, which are defined as “the Presidential Center Architectural Spaces and all other improvements constructed, installed or located on the Subject Property by the Foundation in accordance with the terms of this Agreement.” “Presidential Architectural Spaces” is defined all of the buildings that comprise the Presidential Center. Section 4 of the Use Agreement contains the requirements that the Foundation erect, maintain and operate the buildings that are the subject of the Presidential Center.

Significantly, Section 2.1(c) of the Use Agreement grants the Foundation “the right to use, maintain, operate and alter the Presidential Center Green Space and Green Spaces.” The “Presidential Center Green Space” means all portions of the Presidential Center other than the Presidential Center Architectural Spaces. “Green Space” is defined as “all portions of the Subject Property excluding the Presidential Center.” The “Subject Property” is the entire 19.3 acres of property consisting of the entire Jackson Park Site.

The Use Agreement accordingly provides that the City is allowing the Foundation to erect, maintain and operate its Center together with the grounds immediately adjacent to the museum and to use, possess and occupy those grounds. Thus, the second sentence of Section 1 of the Museum Act could only even possibly authorize the scheme between the City and the Foundation.

The Use Agreement does not comply with the Museum Act. The Use Agreement is not a “lease.” In fact, the City and the Park District adamantly argued that the Use Agreement is not a lease in their Motion for Judgment on the Pleadings. Page 31 of the City’s Memorandum in support of its Motion expressly states: “Whatever the merits of that conclusion, the City will, in this case, own the OPC’s buildings, and the agreement between the OPC and the City *is not a lease.*” (Emphasis in original). (Dkt No. 49-1 at page 37 or 44 [Page ID#:1199]). Further, the City stipulated that the Use Agreement is not a “lease.” PSOF¶ 46. Defendants’ judicial admission that the Use Agreement is not a lease now bars them from contending that it is a lease, in order to fit within the terms of the Museum Act. *See, Keller v. U.S.*, 58 F.3d 1194, 1198 n. 8 (7<sup>th</sup> Cir. 1995)(judicial admissions are “formal concessions in the pleadings, or stipulations by a party or its counsel, that are binding upon the party making them.”).

The Use Agreement is further not in compliance with Section 1 of the Museum Act, because the grounds and buildings do not revert to the City “at the expiration or lawful termination of the lease.” Section 4.4 of the Use Agreement provides that title to the Improvements is vested in the City upon completion of the Improvements.

Furthermore, the Museum Act does not apply to the transaction at issue, because the Museum Act expressly contemplates the corporate authorities entering into a “lease” for the long-term use of public trust property, which indicates the legislature’s intent that Defendants must charge a reasonable, market value rent for the Jackson Park Site. Under Illinois law, the terms “rent” and “lease” are synonymous when referring to types of contracts, with “no meaningful differences in their definitions”. *Argonaut Midwest Insurance Co. v. Morales*, 2014 IL App (1st) 130745, ¶ 38, 19 N.E.3d 32 (2014) (citing *See Black's Law Dictionary* 970 (9th ed. 2009) (defining “lease” as “[a] contract by which a rightful possessor of real property conveys

the right to use and occupy the property in exchange for consideration, usu. rent."); and Webster's 3d New International Dictionary Unabridged 1923 (1993) (defining "rent" as "to take and hold under an agreement to pay rent")); *Metzger v. Country Mut. Ins. Co.*, 2013 IL App (2d) 120133, P37 (Ill. App. Ct. 2d Dist. 2013) (defining "lease" as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration"); *accord*, *Friends of the Parks v. Chicago Park Dist.*, 160 F. Supp. 3d 1060, 1068, 2016 U.S. Dist. LEXIS 13187, \*18-20 (N.D. Ill. February 4, 2016). It is undisputed that the City is not charging the Foundation anywhere near market rent for the Jackson Park Site.

Simply put, the Museum Act does not apply to the City's Use Agreement at issue. The Museum Act accordingly does not authorize the Presidential Center on the Jackson Park Site. The City's action of approving the Foundation's use and occupancy of the Jackson Park Site under the terms of the Use Agreement is without authority and is an *ultra vires* action.

2. The Park District Had No Authority to Transfer the Jackson Park Site to the City.

The 2018 Ordinance asserts that the Local Government Property Transfer Act, 50 ILCS 605/0.01 *et seq.* ("Property Transfer Act"), allows the City to transfer the Jackson Park Site to the Park District for the total sum of \$1.00, which in turn the Foundation will improve, use and occupy for at least the next 99 years. The Property Transfer Act, however, does not allow the Park District to transfer the Jackson Park Site to the City in order to permit the City to transfer to the Foundation the right to improve, use and occupy the Jackson Park Site.

Section 2 of this Property Transfer Act provides as follows:

If the territory of any municipality shall be wholly within, coextensive with, or partly within and partly without the corporate limits of any other municipality, or if the municipality is a school district and the territory of the school district is adjacent to the boundaries of any other school district, and the first mentioned municipality (herein called "transferee municipality"), shall by ordinance declare that it is necessary or convenient for it to use, occupy or improve any real estate held by the last mentioned municipality (herein called the "transferor

municipality") in the making of any public improvement or for any public purpose, the corporate authorities of the transferor municipality shall have the power to transfer all of the right, title and interest held by it immediately prior to such transfer, in and to such real estate, whether located within or without either or both of said municipalities, to the transferee municipality upon such terms as may be agreed upon by the corporate authorities of both municipalities, in the manner and upon the conditions following: (Emphasis added).

Pursuant to Section 2 of the Property Transfer Act, if a transferee municipality, such as the City of Chicago, desires to obtain land from another “municipality,” a park district, the City may obtain the property if the City declares in an ordinance that it is necessary or convenient for “it [the City] to use, occupy or improve. . .” Thus, under the plain wording of Section 2 of the Property Transfer Act, the transferee municipality (Chicago) must “use, occupy or improve” the real estate at issue. *See, Alt. Fuels, Inc. v. Director of Il. EPA*, 215 Ill. 2d 219, 238 (2004)(courts give effect to the statute’s plain meaning).

Here, the City, by its own admission, is not “using, occupying or improving” the Jackson Park Site: it is the Obama Foundation, not the City, that is “using, occupying or improving” the Site. The 2018 Ordinance provides that the City’s acquisition of the Jackson Park Site from the Park District was done for the purpose of the City’s “subsequent long-term authorization to the Foundation for use of the OPC Site.” (“Emphasis added). PSOF¶ 41, Page 10 of Exhibit C to Roth Declaration [Exhibit 4]. The 2018 Ordinance and the Use Agreement provide that the City is granting the Foundation the right to occupy the Jackson Park Site, and it is the “Foundation’s obligation to construct, operate and maintain the OPC, at its sole cost and expense...” PSOF¶ 41, page 11 of Exhibit C to Roth Declaration [Exhibit 4]. The 2018 Ordinance also provides that the



Use Agreement permits the Foundation to “use” the Jackson Park Suite for at least the original 99 year term.<sup>3</sup>

The Use Agreement itself states that the Foundation will “improve” the Jackson Park Site by building various structures, including a Forum Building; a Program, Athletic and Activity Center; a Library, and a Museum Building, and the surrounding green space comprising the Jackson Park Site, all of which are included within the definition of “Project Improvements” in the Use Agreement.

Section 2.1 of the Use Agreement then specifically provides that:

. . . the City hereby gives and grants to the Foundation for the Term the following rights with respect to the Subject Property:

- (a) the right to construct and install the Project Improvements (including the Presidential Center);
- (b) the right to occupy, use, maintain, operate and alter the Presidential Center Architectural Spaces; and
- (c) the right to use, maintain, operate and alter the Presidential Center Green Space and Green Space. (Emphasis added)<sup>4</sup>

Therefore, the Foundation itself, not the City, is “using, occupying or improving” the Jackson Park Site. The Property Transfer Act accordingly does not apply to authorize the Park District transferring the Jackson Park Site to the City of Chicago.

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<sup>3</sup> “SECTION 5. The City is hereby authorized to grant rights of use if the OPC Site. . . to the Foundation. . .” PSOF¶ 41, page 14 of Exhibit C to Roth Declaration [Exhibit 4].

<sup>4</sup> Additional provisions of the Use Agreement conclusively establish that the Foundation, not the City, will “use, occupy and improve” the Jackson Park Site. For example, Section 4.1 of the Use Agreement provides that the Foundation, at its sole costs and expense, will design and construct all improvements on the Jackson Park Site. Section 6.1 of the Use Agreement provides that the Foundation shall solely construct, modify and improve all of the building and landscaping on the Jackson Park Site. Section 6.3 of the Use Agreement provides prohibitions on the Foundation’s use and occupancy of the property. Those restrictions include such prohibitions as the Foundation using the property in ways that would void insurance coverage, and the Foundation using the property in a manner which would violate any laws, and other such similar provisions.

If this were all not enough, the Park District's transfer of the Jackson Park Site to the City violates an additional, separate provision of the Property Transfer Act. Section 2(b) of the Property Transfer Act, 50 ILCS 605/2(b), provides that:

(b) If any such real estate shall be held by the transferor municipality subject to or limited by any restriction, and the transferee municipality shall desire the use, occupation or improvement thereof free from said restriction, the transferor municipality (or the transferee municipality, in the name of and for and on behalf of the transferor municipality, but without subjecting the transferor municipality to any expense without the consent of its corporate authorities), shall have the power to secure from its grantor, or grantors, their heirs, successors, assigns, or others, a release of any or all of such restrictions upon such terms as may be agreed upon between either of said municipalities and the person or persons entitled to the benefit of said restrictions. Upon the recording of any such release, the transferor municipality shall then have the powers granted in paragraph (a) of this Section.

Therefore, if a transferor park district desires to transfer property limited by a restriction to a transferee municipality, the park district may only do so with the agreement of both the transferee municipality and "the person or persons entitled to the benefit of said restrictions."

The term "restriction" is defined in the Property Transfer Act as follows:

The term "restriction" shall mean any condition, limitation, qualification, reversion, possibility of reversion, covenant, agreement or restraint of whatever kind or nature, the effect of which is to restrict the use or ownership of real estate by a municipality as defined in (c) above.

50 ILCS 605/1(d).

The statute transferring Jackson Park to the Park District contained an express condition that Jackson Park be maintained as a "public park" and "free to all persons forever," and that language is a "restriction" under Section 1(d) of the Property Transfer Act. The Illinois Supreme Court has expressly found that the statute transferring the land at issue in Jackson Park to the now Chicago Park District containing the restriction that the land "when acquired by the Commissioners, as provided by this act, shall be held, managed and controlled by them and their

successors, as a public park, for the recreation, health and benefit of the public, and free to all persons forever” is a restriction on the property, and “restrictive language” on the use of the of the property. *Paepcke*, 46 Ill. 2d at 333, 336, 263 N.E.2d at 14, 15. The *Paepcke* court also ruled that this same language specified that this “restrictive language” provided that the land is devoted to park purposes. *Id.* Thus, the language contained in the Act is unquestionably a restriction placed on the property by the Illinois legislature.

The buildings contemplated by the 2018 Ordinance and the Use Agreement will alter the use from that of a “public park . . . free to all persons forever.” The buildings will not at all times be free to all persons forever, as established in the undisputed facts.

The beneficiaries of the restriction on the use of Jackson Park as “a public park . . . free to all persons forever” are the citizens of the State of Illinois. There is no evidence before this Court that the State of Illinois has released any restriction on Jackson Park Site for the contemplated transaction at issue, and further there is no evidence that the State has “recorded such a release,” as required under the Property Transfer Act. Thus, the Park District and City’s purported transfer of the Jackson Park Site is improper under the very statute that the City and Park District allege authorize the sale of the Jackson Park Site.

#### **D. REQUESTED RELIEF**

Plaintiffs request this Court enter the following relief, as requested in the Plaintiffs’ Complaint:

1. Permanent Injunction.

Plaintiffs seek a permanent injunction, enjoining the City from allowing the Foundation to alter Jackson Park in any way, including but not limited to erecting any buildings or structures

on the Jackson Park Site and taking possession or control of the Jackson Park Site. Plaintiffs have met all of the requirements for such a permanent injunction.

A plaintiff seeking a permanent injunction must satisfy a four-factor test. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). A plaintiff satisfies that test a plaintiff (1) has suffered an irreparable injury; (2) remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) the balance of hardships between the plaintiff and defendant warrants a remedy in equity; and (4) a permanent injunction would not disserve the public interest. *Id.* Permanent injunctive relief is particularly appropriate when public trust property is subject to impairment. *See, Lake Michigan Fed.'n*, 742 F. Supp at 447 (granting permanent injunction against impairment to public trust property). Plaintiffs have proven all of the elements entitling them to permanent injunction, enjoining the City from allowing the Foundation to alter, in any way, the Jackson Park Site.

a.) Irreparable Injury.

Irreparable injury is defined as “harm that cannot be prevented or fully rectified by the final judgment after trial.” *Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 386 (7th Cir. 1984) (reversing grant of preliminary injunction); *see also Happy R Secs., LLC v. Agri-Sources, LLC*, 2013 IL App (3d) 120509, ¶ 35, 988 N.E.2d 972, 979 (irreparable harm means that “monetary damages cannot adequately compensate the injury and the injury cannot be measured by pecuniary standards”) (quoting *Hensley Constr., LLC v. Pulte Home Corp.*, 399 Ill. App. 3d 184, 190, 926 N.E.2d 965, 971 (2d Dist. 2010)). The Jackson Park Site represents irreplaceable, historic public trust property. Plaintiffs would be irreparably harmed if the City is allowed to allow the Foundation to alter the Jackson Park Site.

b.) Inadequate Remedy at Law.

Whether there is an adequate remedy at law is often considered together with whether there is irreparable harm. *See, e.g., Libertarian Party v. Packard*, 741 F.2d 981, 984 (7th Cir. 1984); Where land is the subject matter of the dispute, the inadequacy of the legal remedy is well-settled.” *Happy R Secs.*, 2013 IL App (3d) 120509, ¶ 37.

c.) Balance of Hardships.

The irreparable harm the non-movant will suffer if an injunction is granted is weighed against the irreparable damage the movant will suffer if it is not. *Meridian Mut. Ins. Co. v. Meridian Ins. Grp.*, 128 F.3d 1111, 1120 (7th Cir. 1997). In the present instance, there is no harm to Defendants if the injunction is granted. Defendants have no right to violate the public trust doctrine, nor do they have a right to violate Plaintiffs’ due process rights. Further, the transactions at issue are *ultra vires*. The harm to the Plaintiffs, however, is the destruction of irreplaceable land in historic Jackson Park.

d.) Public Interest.

The primary concern is to ensure that issuing an injunction will not disserve or harm the public interest. *Gateway E. Ry., Co. v. Terminal R.R. Assoc. of St. Louis*, 35 F.3d 1134, 1139 n.3 (7th Cir. 1994). Here, if the Court grants Plaintiffs’ Motion for Summary Judgment as to any of the counts, then there is no public interest that favors Defendants. In fact, the public interest would require that this Court enter a permanent injunction.

2. Declaratory Judgment.

The undisputed facts at issue prove a substantial controversy between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment, which is the standard for a declaratory relief. *See, e.g., MedImmune, Inc.*

*v. Genetech, Inc.*, 549 U.S. 118, 127 (2007). Plaintiffs seek a declaratory judgment that the Park District's act of transferring the Jackson Park Site to the City is *ultra vires*, and that the Property Transfer Act does not authorize the Park District to transfer the Jackson Park Site to the City. Plaintiffs also request a declaratory judgment that the Museum Act does not apply to the Use Agreement at issue, and further does not authorize the City to allow the Foundation to construct the Presidential Center and to possess and occupy the Jackson Park Site.

3. Attorney's Fees and Costs.

42 U.S.C. § 1988 provides that prevailing plaintiffs in § 1983 litigation, as Plaintiffs have asserted here, are entitled to a reasonable attorney's fee unless special circumstances render such an award unjust. Section 1988 of Title 42 of the United States Code gives a court broad authority to award reasonable attorney's fees to a prevailing party in a federal civil rights action. *See, e.g., Smith v. Robinson*, 468 U.S. 992, 104 S. Ct. 3457, 82 L. Ed. 2d 746 (1984); *Hibma v. Odegard*, 769 F.2d 1147, 1157 (7th Cir. 1985); citing *Lock v. Jenkins*, 634 F. Supp. 615, 621 (N.D. Ind. 1986).

A party is generally considered to have prevailed within the meaning of Section 1988, if that party has "accomplished the objectives of his litigation." *NAACP v. Bell*, 448 F. Supp. 1164, 1166 (D.D.C.1978). This interpretation of "prevailing party" is consistent with the legislative history of Section 1988. *Lackey v. Bowling*, 476 F. Supp. 1111, 1113 (N.D. Ill. 1979). A plaintiff who obtains non-monetary relief in a §1983 action is a "prevailing party" and is entitled to his attorney's fees. *See, Lefemine v. Wideman*, 133 S.Ct. 9 (2012). A prevailing plaintiff is also entitled to the plaintiff's costs incurred in the litigation. Plaintiffs are entitled to costs (including attorney's fees) under Section 1988. *See, Rateree v. Rockett*, 668 F. Supp. 1155, 1160 (N.D. Ill. 1987).

IV.  
**CONCLUSION**

For the reasons set forth herein, Plaintiffs request that this Court enter summary judgment in their favor as to Counts I, II, III and IV of Plaintiffs' Complaint. Plaintiffs request that this Court enter the injunctive and declaratory relief requested, and enter an award of attorney's fees and costs. Plaintiffs also request such other and further relief as this Court deems just.

Respectfully submitted,

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